

WASTE DISPOSAL AGREEMENT ADDENDUM

THIS WASTE DISPOSAL AGREEMENT ADDENDUM is made and entered into as of the ____ day of _____, 2016, by and between PENOBSCOT ENERGY RECOVERY COMPANY, LIMITED PARTNERSHIP, a Maine limited partnership [hereinafter referred to as "PERC"], and the Municipality of Lamoine, Maine.

RECITALS:

WHEREAS, PERC and the Municipality entered into a certain Waste Disposal Agreement dated _____, 2016, with a term beginning on April 1, 2018; and

WHEREAS, PERC and the Municipality have reached an additional agreement with respect to certain revisions, changes, and amendments to the Waste Disposal Agreement described in the preceding paragraph and wish to memorialize those changes in writing;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises of the parties hereto, and the mutual benefits to be gained by the performance hereof, the parties agree to amend the above-described Waste Disposal Agreement [hereinafter referred to as the "Agreement"] as follows:

1. The second sentence of Section 3(a) of the Agreement is hereby amended to read as follows:

"The Municipality further agrees that, except for those instances where Acceptable Waste is delivered with the knowledge and consent of PERC pursuant to the terms contained in Section 5(a) and (b) of Schedule A to the Agreement, it will not deliver Acceptable Waste collected by a Municipality to any landfill or other solid waste disposal facility without first obtaining the prior written consent of PERC to do so."

2. Section 5 of the Agreement is hereby amended by deleting the third sentence, which presently reads as follows:

"PERC and the Municipality acknowledge and agree that the above-described necessary commitments for delivery and receipt of Acceptable Solid Waste from other municipalities and private businesses to assure the continued operation of the PERC Facility must occur on or before February 18, 2017 and must equal, in the aggregate, one hundred eighty thousand (180,000) tons per year."

3. Section 7 of the Agreement is hereby amended by adding the following new subsection (h) at the end thereof:

"(h) By a Municipality, at its option, but only after the effective date of the permanent closing of PERC contained in a written notice received by a Municipality from PERC. Such written notice shall not be unreasonably withheld or delayed."

4. The first sentence in Section 8 is hereby amended to read as follows:

“PERC agrees to indemnify, defend and hold harmless the Municipality and its managers, officers and officials, employees and agents, and the Municipality agrees to indemnify, defend and hold harmless PERC and its directors, officers, owners, managers, employees and agents, from and against all loss, liability, damage and expense (including attorneys’ fees and expenses incurred in enforcing this indemnification), arising out of or relating to (i) any breach by an indemnifying party of this Agreement, (ii) any negligent or willful act or omission of an indemnifying party, or (iii) any violation by an indemnifying party of applicable laws, regulations, permits or licenses.”

5. The Agreement is hereby amended by adding the following new Section 10:

“10.) Dispute Resolution. In the event that a dispute should occur with respect to any of the subject matter of this Agreement, the parties agree that they will use their best efforts to resolve the dispute in a mutually acceptable manner. If a dispute has not been resolved by the parties within thirty (30) calendar days of the date on which it is determined to exist by the giving of written notice by one party to the other, the parties agree that any such dispute shall then be submitted to non-binding mediation before a neutral mediator to be chosen by mutual agreement of the parties within ten (10) calendar days. In the event that mediation is not successful in resolving a dispute within thirty (30) calendar days, either party shall have the right to have the dispute judicially resolved before the courts of the State of Maine.”

6. The Agreement is hereby amended by renumbering the existing Section 10 under the heading “Miscellaneous” to be Section 11.
7. The Agreement is hereby amended in that part designated as Schedule A by revising the last paragraph of Section 2 to read as follows:

“The parties hereto agree that any Agreement signed for either a fifteen (15) year or ten (10) year term shall automatically renew on the same basis, unless otherwise terminated by either the Municipality or PERC within six (6) months of the commencement of the final year of the then existing term. PERC shall provide written notice to the Municipality at the commencement of the final year of the existing term of its contract with PERC of the fact that, unless the Municipality provides written notice to PERC within six (6) months of the date of that notice that it wishes to terminate the Agreement after the expiration of its then current term, the Agreement shall automatically renew under the provisions of this section. A termination by the Municipality pursuant to the provisions of this section shall not be considered a Deemed Termination under Sections 3(c) and 6(b) or a Municipality Termination under Section 6(a) of this Schedule A and will not result in a penalty being assessed against the Municipality. Also, any contract term that is less than ten (10) years shall be priced on a case-by-case basis and will be based on the then current market pricing.”

8. The last sentence of Section 3(a) of that part of the Agreement designated as Schedule A is hereby amended to read as follows:

“PERC further acknowledges that any such efforts on the part of a Municipality shall not constitute a violation, shall not be considered a Deemed Termination pursuant to Sections 3(c) and 6(b) of this Schedule A and will not result in a penalty being assessed against the Municipality.”

9. Section 3(b) of that part of the Agreement designated as Schedule A is hereby amended to read as follows:

“Both the Municipality and PERC believe that the amount of Estimated Tonnage as described above is unlikely to change materially over time. However, if there is a material change in the amount of the Estimated Tonnage, the Municipality will provide written notice to PERC that there has been a material change in the amount of the Estimated Tonnage that will be delivered to the PERC Facility. Any such change in the Estimated Tonnage pursuant to the provisions of this subsection shall not be considered a Deemed Termination pursuant to Sections 3(c) and 6(b) of this Schedule A and will not result in a penalty being assessed against the Municipality.”

10. Section 5 of that part of the Agreement designated as Schedule A is hereby amended by adding the following new subsection at the end thereof:

“(f) In the event that the provisions of this Section 5 concerning the disposition of Bypass Waste become operational and effective, PERC shall use its best efforts at the time of such occurrence to assist the Municipality in all reasonable manners to contain the cost of transporting the Bypass Waste, including, but not limited to, such possible means as the permitting and operation of the PERC Facility site as a transfer station to reduce transportation costs through economies of scale and the development of possible standby transportation contracts, which would be focused on the containment and predictability of future transportation costs in the event of the need for the transportation of Bypass Waste.”

11. In all other respects, the above-described Waste Disposal Agreement between PERC and the Municipality shall remain in full force and effect and shall only be further amended by written agreement of the parties hereto.

PERC:

MUNICIPALITY:

THE PENOBSCOT ENERGY RECOVERY
COMPANY, LIMITED PARTNERSHIP

TOWN OF LAMOINE

By: USA Energy Group, LLC
Its: General Partner

By: _____
Gary McFarland
Its: Selectman, duly authorized

By: _____
Its: President

By: _____
S. Josephine Cooper
Its: Selectman, duly authorized

By: _____
Kathleen Rybarz
Its: Selectman, duly authorized

By: _____
Robert Christie
Its: Selectman, duly authorized

By: _____
Nathan Mason
Its: Selectman, duly authorized